

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

KENT H. MIDDLETON, JR., as Personal representative of The Estate of Amanda Middleton,)	Civil Action No.: 7:10-02529-MGL
)	
)	
)	
Plaintiff,)	DEFENDANTS' MOTION FOR
)	EXTENSION OF TIME TO FILE
v.)	DISPOSITIVE MOTIONS
)	
NISSAN MOTOR COMPANY, LTD., NISSAN NORTH AMERICA, INC., AUTOLIV, INC. and AUTOLIV ASP, INC.,)	
Defendants.)	
)	

Defendants Nissan Motor Co., Ltd., Nissan North America, Inc., and Autoliv ASP, Inc. respectfully request the Court grant an extension of time beyond the current April 15 deadline for Defendants to file their dispositive motions and accompanying Daubert challenge to the admissibility of the expert opinions of Plaintiff's seatbelt design expert Dr. Craig Good. Defendants have consulted with Plaintiff's counsel in an effort to resolve this issue without resort to the Court, but an agreement could not be reached.

Under this Court's scheduling order, dispositive motions must be filed by April 15, 2013. **ECF 111.** Defendants intend to seek dismissal pursuant to Rule 56 of Plaintiff's claims due to his failure to present admissible evidence that the subject buckle is defective and/or unreasonably dangerous. That motion will be supported by a corresponding motion filed pursuant to Daubert to exclude the proffered testimony of Plaintiff's seatbelt expert Dr. Craig Good. As this Court is aware, Defendants have sought the Court's leave to depose Dr. Good again in regard to his recent expert report and testing which was disclosed to Defendants on January 29, 2013, the day discovery

closed under the scheduling order that was in effect at that time. **ECF 100.**¹ Plaintiff opposes this deposition, and the issue is currently pending before the Court. While Plaintiff interprets the current scheduling order to allow Defendants until June 28 to file a Daubert challenge, because the exclusion of Dr. Good's testimony would be dispositive of all of Plaintiff's claims in this case, Defendants seek additional time to secure the deposition of Dr. Good (pending this Court's resolution of that motion) to enable them to provide this Court with all available information to support of their motion for summary judgment. See e.g., Disher v. Synthes (U.S.A.), 371 F.Supp.2d 764 (D.S.C. 2005) (applying South Carolina law) (explaining that in complex product liability actions, proof that a product is "in a defective condition, unreasonably dangerous to the consumer" and of proximate cause must be established through competent expert testimony).

Because the deposition Defendants seek will necessarily provide Defendants with information relevant to their motion for summary judgment, Defendants respectfully request that the deadlines for filing these motions be extended pending this Court's ruling on the motion for leave to depose Dr. Good. Should this Court grant Defendants' motion, Defendants seek fourteen days beyond the date of Dr. Good's deposition to file their dispositive motion and corresponding Daubert challenge. In the alternative, should this Court deny Defendants' motion, Defendants seek an extension of fourteen days

¹ See Motion for Leave of Court to Continue the Deposition of Plaintiff's Expert Craig Good and Memorandum in Support, ECF 112; Memorandum in Response to Defendants' Motion for Leave of the Court to Continue the Deposition of Plaintiff's Expert Craig Good, ECF 115; Defendants' Reply to Plaintiff's Response to Defendants' Motion for Leave of Court to Continue the Deposition of Plaintiff's Expert Craig Good, ECF 117.

from the date of that ruling to file their dispositive motion and corresponding Daubert challenge.

BOWMAN & BROOKE, LLP

By: /s/ Courtney C. Shytle

Joel H. Smith

Federal Bar No. 3910

E-Mail: joel.smith@bowmanandbrooke.com

Courtney C. Shytle

Federal Bar No. 7148

E-Mail: courtney.shytle@bowmanandbrooke.com

Angela G. Strickland

Federal Bar No. 9824

E-Mail: angela.strickland@bowmanandbrooke.com

1441 Main Street, Suite 1200

Columbia, SC 29201

(803) 726-7420

Attorneys for Nissan Motor Co., Ltd. and Nissan North America, Inc.

NELSON MULLINS RILEY & SCARBOROUGH

By:/s/Deirdre S. McCool (with permission)

Deirdre S. McCool

Federal Bar No. 5518

E-Mail: Deirdre.McCool@nelsonmullins.com

151 Meeting Street, Suite 600

Charleston, SC 29401

(843) 853-5200

Attorney for Autoliv ASP, Inc.

Columbia, South Carolina

April 8, 2013